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Attorneys for Guardian News and Media LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL GRECCO PRODUCTIONS, INC.
and MICHAEL GRECCO,

No.: 1:19-cv-05672-VSB

Plaintiff,

- against -

**ANSWER AND DEFENSES OF
GUARDIAN NEWS AND MEDIA LLC
TO COMPLAINT**

GUARDIAN NEWS AND MEDIA LLC and
GETTY IMAGES, INC.

Defendants.

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GUARDIAN NEWS AND MEDIA LLC (“The Guardian”), by its attorneys, Miller Korzenik Sommers Rayman LLP, for its Answer to the Complaint (“Complaint”) of Plaintiffs MICHAEL GRECCO PRODUCTIONS, INC. and MICHAEL GRECCO (together, “Plaintiffs”), alleges as follows:

1. Denies each and every allegation set forth in Paragraphs 1 and 2 of the Complaint to the extent they are in any way factual as against The Guardian, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 1 and 2 of the Complaint as against Defendant Getty Images, Inc. (“Getty”), and respectfully refers the Court to the legal conclusions set forth therein.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 3 through 5 of the Complaint.

3. Denies each and every allegation set forth in Paragraph 6 of the Complaint, except admits, for the purposes of this action, that The Guardian is a limited liability company duly organized under the laws of the State of Delaware, with a principal place of business at 315 West 36th Street, New York, NY 10036.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Complaint.

5. Denies each and every allegation set forth in Paragraphs 8 through 10 of the Complaint to the extent they are in any way factual as against The Guardian, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 8 through 10 of the Complaint as against Getty, and respectfully refers the Court to the legal conclusions set forth therein and to the statutes referred to for their content and interpretation.

6. Denies each and every allegation set forth in Paragraph 11 of the Complaint to the extent they are in any way factual as against The Guardian, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Complaint as against Getty, and respectfully refers the Court to the legal conclusions set forth therein and to the statutes referred to for their content and interpretation, except admits that The Guardian is located in this District.

7. Denies each and every allegation set forth in Paragraph 12 of the Complaint to the extent they are in any way factual as against The Guardian, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Complaint as against Getty, and respectfully refers the Court to the legal conclusions set forth

therein and to the statutes referred to for their content and interpretation, except admits that The Guardian may be found in this District.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 13 through 16 of the Complaint, except admits that an article dated September 24, 2018 and entitled “Google at 20: how two 'obnoxious' students changed the internet” (the “Article”) appears at the web page <https://www.theguardian.com/technology/2018/sep/24/google-at-20-larry-page-sergey-brin-internet>; further admits that a copy of the photograph in issue (the “Photograph”) appeared in the Article with a caption credit to “Michael Grecco/Getty Images”; and further avers that the Photograph has been removed from the Article page.

9. Denies each and every allegation set forth in Paragraph 17 of the Complaint to the extent they are in any way factual, and respectfully refers the Court to the legal conclusions set forth therein.

10. Repeats and realleges the allegations set forth in Paragraphs 1 through 9 of its Answer as if fully set forth herein, in response to Paragraph 18 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 19 and 20 of the Complaint.

12. Denies each and every allegation set forth in Paragraphs 21 and 22 of the Complaint to the extent they are in any way factual as against The Guardian, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 21 and 22 of the Complaint as against Getty, and respectfully refers the Court to the legal conclusions set forth therein and to the statutes referred to for their content and interpretation.

13. To the extent any subheadings in the Complaint contain factual allegations, The Guardian denies or denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in those subheadings.

14. To the extent the Complaint's demand for relief contains factual allegations, The Guardian denies or denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in the demand for relief, and respectfully refers the court to the statutes referred to therein for their content and interpretation.

DEFENSES

1. Plaintiffs have failed to state a cause of action upon which relief can be granted against The Guardian.

2. Plaintiffs' purported claims cannot succeed because their copyright registration is invalid.

3. To the extent that Plaintiffs lack a valid interest in the copyright in the Photograph, or the Photograph cannot be copyrighted, they lack standing to assert their purported claims.

4. Plaintiffs' purported claims are barred by waiver, estoppel, justification and/or consent.

5. Plaintiffs' purported claims are barred by release or license.

6. Plaintiffs' purported claims are barred in whole or in part by their own knowledge, representations and/or conduct.

7. Plaintiffs' purported claims are barred by the doctrine of laches and/or unclean hands, and/or the doctrine of *in pari delicto*.

8. Plaintiffs' purported claims are barred because the conduct of The Guardian was not the proximate cause of any alleged damage to Plaintiffs.

9. Plaintiffs are not entitled to any award for damages and The Guardian's profits, if any, under 17 U.S.C. § 504.

10. Plaintiffs' recovery of damages, if any, is limited by the concept of innocent infringement and/or 17 U.S.C. § 504(c)(2).

11. Plaintiffs have failed to mitigate their alleged damages, if any, and any alleged damages should be barred or reduced.

12. Plaintiffs are not entitled to any award for statutory damages or for costs, expenses, or attorneys' fees, including but not limited to such remedies under 17 U.S.C. § 505. In fact, pursuant to those statutes, The Guardian should be entitled to *its* costs, including reasonable attorneys' fees.

13. The Guardian reserves the right to assert and rely on other defenses that become available or appear during the course of this action.

WHEREFORE, The Guardian demands judgment in its favor against Plaintiffs on the Complaint:

(A) dismissing each cause of action, and each claim that has or could have been asserted therein, with prejudice;

(B) awarding to The Guardian its full costs and reasonable attorneys' fees incurred in the defense of this matter, together with interest, including prejudgment interest, thereon, pursuant to 17 U.S.C. § 505;

(C) awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 30, 2019

MILLER KORZENIK SOMMERS RAYMAN LLP

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